

POLICY REGARDING PUBLIC RECORDS REQUESTS

It is the policy of Bainbridge Island Metropolitan Park & Recreation District (the "District") to release records of the District in compliance with the Public Records Act (the "Act"), set forth at RCW 42.17.250 to 42.17.348 (after July 1, 2006, Chapter 42.56 RCW), RCW 42.30, and any other applicable provisions of federal or state law.

I. OVERVIEW OF THE PUBLIC RECORDS ACT

A. Purposes of the Policy

The purposes of this policy are to: (1) describe the organization of the District; (2) ensure compliance with Chapter 42.17 RCW/42.56 RCW, the Public Records Act; again 42.30 RCW, and (3) provide procedures for how public records requests are to be handled by the District.

This policy shall be available at the District's Main Office and posted on the District's Website.

B. Definitions

1. "Act" refers to the Public Records Act, currently codified at Chapter 42.17 RCW, to be recodified as of July 1, 2006, at Chapter 42.56 RCW.
2. "District" refers to the Bainbridge Island Metropolitan Park & Recreation District.
3. "Main Office" is defined in Section I.C of this Policy.
4. "Policy" refers to this policy for the Public Records Act.
5. "Public Records Officer" is the person identified in Section II.A.1 of this Policy.
6. "Records Request" means a request for public records made to the District pursuant to the Act.
7. "Requester" means the person or entity that has made a Records Request to the District.
8. "Redaction" means non-disclosure of exempt records, either all or in part.
9. The definitions provided in RCW 42.17.020 apply to this policy and are incorporated by reference.

C. Organization of the District

In accordance with RCW 42.17.250(1)(a), the public may obtain information, make submittals or requests, or obtain copies of agency decisions at the District's Main office identified below.

The District's Main Office is located at Strawberry Hill Park, 7666 NE High School Road, Bainbridge Island, Washington. All record requests shall be inspected at the Main Office. The Main Office is open 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays.

The District recognizes that the Bainbridge Island community aspires to have optimum recreational areas, facilities and programs to meet their recreational needs, and in order to obtain this goal have adopted objectives to acquire, preserve and maintain park and recreation facilities, and develop, offer and facilitate comprehensive year round recreational programs.

The District is managed by a Board of Commissioners.

II. GUIDELINES

A. Public Records Request

1. Public Records Officer.

The District's Public Records Officer is the Office Manager. The Public Records Officer may be contacted in person at the Main Office, or via first class mail addressed to the Public Records Officer at the Main Office. The Public Records Officer shall designate an Assistant Public Records Officer. The Assistant Public Records Officer shall carry out all of the Public Records Officer's duties when the Public Records Officer is not available due to vacation, sick leave or otherwise.

The person serving as the Public Records Officer may change from time to time. The name and contact information for the current individual serving as the Public Records Officer shall be posted at the Main Office and on the District's website, and published in any widely circulated District publication such as its quarterly brochure.

The Public Records Officer is available for assistance, providing information about the District's index, and forwarding appeals of denial of disclosure to the Director. The Public Records Officer may delegate any of its responsibilities to District staff, with the Director being ultimately responsible for overseeing compliance with the Act and this Policy. The Public Records Officer shall:

(a) Be responsible for implementing the District's process regarding disclosure of public records;

(b) Serve as the principal contact point with any Requester who has made a Records Request to the District, unless the Public Records Officer has delegated these responsibilities for a particular Records Request to a staff member;

(c) Coordinate District staff in this regard, generally ensuring the compliance of the staff with public records disclosure requirements;

(d) Consult with Director regarding possible exemptions who will make final decision as to their disclosure or redaction and application as per Section II.F of this Policy.

(e) Maintain the District's Public Records indices.

All Records Requests should be made, or referred by the staff person receiving such request, to the Public Records Officer. All subsequent communications from a Requester should also be directed to the Public Records Officer, unless a staff person has been delegated the responsibilities for a particular request.

2. How to Make a Public Records Request.

The Act requires that the District prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the District. Public records may be inspected or copies of public records obtained by the public at the District's Main Office upon compliance with the following procedures:

(a) A request shall be made in writing and directed to the Public Records Officer. It may be mailed or delivered in person to the Main Office. In-person requests must be made during the Main Office's normal business hours. A request form, prescribed by the District, shall be available at the Main Office.

(b) The request shall include the following information:

(i) The name and address of the Requester;

(ii) The date of the request;

(iii) A detailed description of the public record being requested;

(iv) Whether the Requester wants copies, or wants to inspect the requested records;

(v) The address where copies are to be mailed (if so requested) or an indication that the Requester will pick up the copies at the Main Office;

(vi) A statement regarding whether the records are being requested for a commercial purpose; and

(vii) Signature of the Requester.

(c) The District shall not distinguish among Requesters and may not ask about the purposes of a Records Request, except under the following circumstances:

(i) If the Records Request is for records that include lists of individuals, the District may inquire whether the list will be used for commercial purposes. If the list of individuals is being requested for commercial purposes, the District shall deny the request, unless otherwise specifically authorized or directed by law to release such information;

(ii) If the request is for employment records and the Requester is seeking his or her own records, the District shall ask the Requester whether the request is being made pursuant to the Act, or some other right in law or contract to such records. If the Requester elects to pursue the records pursuant to the Act, the request shall be handled according to this policy. If the Requester elects to pursue the records pursuant to a separate right in law or contract, then the request shall be handled pursuant to that law or contract.

(d) An individual's attorney, legal guardian, or lay representative may request certain records concerning an individual only upon a written release signed by that individual. The written release must include: (A) the identity of the person(s) or organization(s) authorized to receive the records; (B) an identification of the record(s), or part of the record, that the individual wants released; and (C) the date the release expires. The District may ask for identification verifying the representative's relationship to the individual.

(e) The District may ask a Requester for personal identification when the law makes a record disclosable only to a specific person.

(f) Any Records Request received by District staff other than the Public Records Officer shall be immediately transmitted by staff to the Public Records Officer.

B. Procedure for Response to Request

Under the Public Records Act, all Public Records (as defined in RCW 42.17.020) of the District are available for disclosure unless the law provides an exemption. All Public Records are and shall remain the property of the District. Outgoing officials and employees shall deliver all Public Records in their possession to their successors before leaving office or employment with the District. Public Records are preserved, stored, transferred, destroyed, and otherwise managed only in accordance with this policy and applicable state law.

Only existing Public Records may be requested. The District is not required to create a Public Record in response to the Records Request. If a Records Request does not identify an existing Public Record, the District shall so inform the Requester.

Only Public Records as defined by RCW 42.17.020 are subject to disclosure. If a request is not for a Public Record, the District shall so inform the Requester.

1. The District shall respond promptly to a Records Request. Within five business days of receiving a Records Request, the District shall respond by:

(a) Send an “Acknowledgement Letter” acknowledging that the District has received the request and providing a reasonable estimate of the time the District will require to respond to the request; or

(b) Notify the Requester that the documents are available, as provided in Section II.E of this Policy;

(c) Deny the Records Request. In a “Denial Letter,” the District should include an exemption log, as described in Section II.CC.5, if any responsive exempt records exist.

2. Additional time for the District to respond to a request may be based on the need to:

(a) Clarify the intent of the request;

(b) Locate and assemble the information requested;

(c) Use the requested record in the District’s normal course of business;

(d) Notify third persons or agencies affected by the request; or

(e) Determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

3. **Unclear Requests.** In acknowledging receipt of a Records Request that is unclear, the District may ask the Requester to clarify what information the Requester is seeking. If the Requester fails to respond to the request for clarification, the District need not respond to it. The District’s request to clarify shall be in writing either by e-mail, letter or fax.

4. **Large Requests.** When a Records Request is for a large volume of records, the District may elect to provide records on an installment basis. In such case, the Public Records Officer should provide a reasonable estimate in the Acknowledgement Letter both when the first installment will be available and when the entire request will be completed. If a Requester does not review or pick up the first installment within 15 days, the District may stop fulfilling the remainder of the request.

5. **Electronic Records.** If the Records Request includes requests for electronic records, the Public Records Officer may request from the Requester a list of key words to assist the District in making a database search.

6. If the District does not respond in writing within five business days of its receipt of the request for disclosure, the person seeking disclosure is entitled to:

(a) Consider the request denied; and

(b) Petition the Public Records Officer under Section II.F of this Policy.

7. Notice to Third Parties. If a Public Record contains personal information that identifies an individual or organization other than the individual or organization that has requested Public Record, the District may notify that other individual or organization. Such notification is discretionary. If the District decides to provide notice, it will send a written notice to the individual or organization if (in the opinion of the Public Records Officer) releasing the personal information creates a risk of damaging the individual or organization, or government operations, or is not in the best interest of the public. The notice should include:

- (a) A description of the record being requested;
- (b) The date the District intends to release the record; and
- (c) How the individual or organization can prevent release of the record.

The District shall also send a written notice to the Requester notifying them that:

- (d) The individual or organization whose personal information is contained in the requested public record has been notified;
- (e) The District expects a response from the individual or organization regarding disclosure of their personal information by a specified date; and
- (f) Disclosure may be denied.

The District shall release the record by the specified date if no one objects or the contacted party does not respond by the specified date.

8. Preservation of Records.

(a) Nothing in this policy prevents the District from destroying records in accordance with a District document retention policy, adopted in accordance with the guidelines promulgated by the Secretary of State Division of Archives and Records Management.

(b) Records containing information relating to employee misconduct or alleged misconduct may be destroyed in accordance with RCW 41.06.450. But if a Record Request is made at a time when such record exists but is scheduled for destruction in the near future for any reason, the Public Records Officer shall retain possession of the record, and may not destroy or erase the record until the request is resolved.

(c) Notwithstanding subsections (a) and (b), if a Record Request is made at a time when such record exists but is scheduled for destruction in the near future for any reason, the Public Records Officer shall retain possession of the record, and may not destroy or erase the record until the request is resolved.

C. Exemptions

1. After the District has gathered records responsive to a Request, the Public Records Officer or designee, shall assist the Director in determining whether an exemption applies to all or part of the record. The District need not make available for inspection and copying public records described in RCW 42.17.310 to .31923 (after July 1, 2006, RCW 42.56.210 to .480) and other records exempt from public inspection and copying by state or federal statute or regulation, including but not limited to:

(a) Personal information regarding board members and District employees to the extent that disclosure would violate their right to privacy, including but not limited to addresses, phone number, Social Security number, voluntary deductions, marriage status, number of dependents, and any garnishment deductions;

(b) Preliminary drafts, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when publicly cited by the board in connection with any board action;

(c) Applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;

(d) The residential addresses and telephone numbers of employees or volunteers which are held in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers; or

(e) Any record which is exempt from disclosure under state or federal law, including records that are privileged attorney-client communications or attorney work product generated in preparation for litigation. The Public Records Officer shall consult with the District's counsel before releasing any records relating to the District's attorneys to determine if the record is in fact privileged or otherwise exempt from disclosure.

(f) Any record relevant to a controversy to which the District is a party but which would not be available to another party under Superior Court rules.

2. The District reserves the right to delete identifying details when disclosing the public record if there is reason to believe that disclosure of such details would be an invasion of personal privacy.

3. If the Director determines that any portion of a public record is exempt, then, if those exempt portions of Public Records can be redacted, the remainder thereof shall be open to public inspection and copying and shall be provided to a Requester. For example, by way of illustration only, a copy of the record may be provided for inspection in which the redacted information has been blacked out with a black marker or otherwise covered during the copying process.

4. For any questions the District may have regarding whether or not an exemption should be redacted, legal counsel assistance may be sought. Items listed in Exhibit A hereto may

be referenced by the District to determine a basis and identify for Requestor the reasons for any exemptions, redactions or omissions.

5. Exemption Log. If the District determines that all or part of a record is subject to an exemption, the District shall so inform the Requester in writing, including:

- (a) A description of the exemption;
- (b) The type of record being withheld;
- (c) A short explanation of why it applies to the record (or part) being withheld;
- (d) The date the record was created;
- (e) The number of pages; and
- (f) The author and recipient, or if otherwise protected, other means of sufficiently identifying particular records without disclosing protected contents.

Where the use of any identifying features would reveal protected contents, the District may designate the record with a numbered sequence.

6. Pursuant to the Act, the District reserves the right to seek to enjoin the examination of any specific record, the examination of which the District determines would clearly not be in the public interest and would substantially and irreparably damage any person or would substantially and irreparably damage vital governmental functions.

D. Inspection and Copying Public Records

1. Inspection of records. No fee shall be charged for the inspection of public records.

2. Copies of records. The District will charge one or more of the following charges for copies of records:

- (a) Fifteen cents per page for standard black-and-white copies prepared by the District;
- (b) Fifteen cents per page for the Requester's use of the District's copier for standard black-and-white copies;
- (c) The actual cost of copying for any non-standard copies or items, including the charge for staff time necessary for making such copies at a rate of \$16 per hour;
- (d) Cost of taxes actually charged by any third-party vendor used to make copies; and

- (e) Postage and shipping costs, including the cost of any containers used in shipping.

The Public Records Officer may elect to waive these fees. Fees will be waived when the expense of billing exceeds the cost of copying and postage.

All copies made shall be sequentially numbered in the lower left corner with the Requestor's initials followed by numbers: *e.g.* "XX 0001." The District shall retain for its files a complete set of the documents produced and so numbered.

3. Deposits. Before copying any record, the District may charge a deposit up to 10% of the estimated costs. When records are being produced on an installment basis, the District may charge for each installment. If an installment is not claimed and paid for within 15 days of the District sending to the Requester a "Notice of Availability Letter" as described in Part II.E, the District is not obligated to fulfill the balance of the Records Request.

E. Inspection of Records

1. Once the Public Records Officer has collected all responsive records (or the first installment if the records are being produced on an installment basis), reviewed the responsive records to remove exempt records, and prepared an exemption log, the Public Records Officer shall send the Requester a "Notice of Availability Letter":

- (a) If no copies have been requested, informing the Requester that the requested non-exempt records are available for review; or

- (b) If copies have been requested, informing the Requester how much the copies will cost, and that the records are available for pick-up or will be mailed once payment has been received.

The exemption log shall be made available at the same time the records are inspected, or a copy of such log shall be provided to the Requester with any copies of records.

2. If the Requester does not inspect the records or pay for copies within 15 days after the Notice of Availability Letter was sent, the District may consider the Records Request abandoned, unless the Requester seeks an additional amount of time to review the records. If the District determines that the Records Request has been abandoned, it shall send a closing letter to the Requester, as described in Section II.E.4 of this Policy.

3. In order that public records maintained on the premises of the District may be protected from damage or disorganization as required by the Act, the following procedures and practices are hereby instituted:

- (a) No public records shall be removed from District's Main Office without the Public Records Officer's permission;

- (b) Inspection of any public records shall be conducted in the presence of the Public Records Officer or designated staff;

(c) No public record may be marked, defaced, torn, damaged, destroyed, unreasonably disorganized or removed from its proper location or order by a member of the public;

(d) Public records maintained in a file jacket, binder or other binding system, or in chronological order, may not be dismantled except for the purpose of copying, and then only by District staff; and

(e) Public records of the District may be copied only on the copying machines of the District unless other arrangements are made by the Public Records Officer.

(f) Inspection shall be denied and the records withdrawn by the Public Records Officer if the Requester, when reviewing records, acts in a manner which will damage or substantially disorganize the records or interfere excessively with other essential functions of the District.

This section shall not be construed to prevent the District from producing copies and from accommodating a Requester by use of the mail in the disclosure process.

4. Closing the File. Once all copies of requested records have been provided to the Requester, the Requester has reviewed the requested records, or 15 days have passed since the Notice of Availability Letter was sent to the Requester and the Requester has failed to review those records or pay for copies, the Public Records Officer shall mail the Requester a "Closing Letter" informing the Requester that the District has fully responded to the Records Request. Upon receipt of the Closing Letter, the Requester should immediately inform the Public Records Officer if the Requester does not think the District has fully complied, or needs additional time to review the records. If the Requester does not respond within five business days after the Closing Letter was sent, the District may treat the matter as closed.

F. Review of Denial of Request

1. Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review to the Public Records Officer who will give it to the Director for consideration. The request for review shall specifically refer to, or be accompanied by, a copy of the written statement by the Director which constituted or accompanied the denial.

2. Promptly after receiving a request for review of a decision denying a public record, the Director shall refer it to the Board of Commissioner's Governance Committee. The Governance Committee shall promptly consider the matter and either affirm or reverse such denial. In any case, the request shall be returned with a final decision within a reasonable time following the original denial.

3. Administrative remedies shall not be considered exhausted until the Governance Committee has returned the petition with a decision.

G. Electronically Stored Data and Information

[[RESERVED]]

H. Index of Public Records

For the reasons stated in Resolution ____, incorporated herein by reference, the District finds that it would be unduly burdensome and would interfere with District operations to maintain an index of records. The District will make available for public disclosure all indices which may at a future time be developed for District use.

I. Disclaimer of Liability

Except as required by state and federal law, compliance with this policy is discretionary. Neither the District nor any officer, employee, official or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon a release of public records if the person releasing the records acted in good faith in attempting to comply with this policy. This policy is not intended to expand or restrict the rights of disclosure or privacy, or the liabilities or responsibilities of the District in responding to a request, as they exist under state and federal law.

Adopted by the Board of Commissioners by Resolution No. 2006-15, adopted on June 22, 2006.

EXHIBIT A

Items To Reference And Cite as well as Specifically Identify to Requesters when Determining Exemptions, Omissions and Redactions (See II(C)4)

1. RCW 42.30 Open Public Meetings Act exempts certain private information as listed in the statute to be possibly redacted, such as for litigation, or pending contracts, real estate purchases or leasing, the qualifications or complaints or charges against an employee or about a potential hire, about potential litigation, and for reasons of privacy, among other disclosure exemptions.

The staff and board will consider any relevant facts such as the actual filing of a law suit, use by requestor of attorneys, circumstances or context, risk management, threats of suit, duration or nature of focus by special interest groups, contentious public statements received, the existence of a dispute, and any reasonable information indicating litigiousness or a serious litigation- charged atmosphere.

2. Miscellaneous cases and legal opinions collected under MRSC Public Records Disclosure Law periodic updates (incorporated herein by reference or attached); and in the case of *Kleven v. King Cty*, at 112 Wn.App 18 (2002).
3. For redactions concerning preliminary opinions, investigations, taking input, public dealings informally between, with, by or among staff, private citizens, and elected officials, or recommendations made in intra-agency memos of opinions, or drafts or tentative policy formulations, or public expressions, or debate or deliberations made in any form off the record or outside a formal meeting, before any final decisions, consider citing to RCW 42.17.310 (h).
4. All drafts are exempt in their entirety because if a draft document was disclosed, it could be compared to the final document, which would expose the editorial judgement and deliberative process of the agency. RCW 42.17.310(1)(i): *Dudman Communications Corp. v Dep't of Air Force*, 815 F.2d 1565, 1568 (D.C.Cir. 1987).
5. For redactions for reasons of “privacy” or “personal information”, consider citing to RCW 42.17.255, 42.17.310 (2) and (3) and 42.17.312.
6. For redactions for reason of “attorney work product or attorney-client privileged information”, consider the actual requested records’ origins and whether such information contains legal statements , attorney opinions, confidential rulings, legal advice, memos or letter opinions, including invoices that relate to any form of litigation, risk management, pending decisions or business matters by the park district, other entities, board, or staff affecting individual or group rights or obligations; negotiations; disputes, and if they are in the form of opinions, research, notes, investigations, analyses, or legal conclusions or involve claims or rights or obligations. The use of stamps or designators like ATTORNEY WORK PRODUCT or ATTORNEY CLIENT PRIVILEGED on any public records shall be an indication but not essential.